

STATEMENT FOR THE RECORD

BY

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SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON SECURITY AND TERRORISM

ON

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ON

S. 391, THE "INTELLIGENCE IDENTITIES PROTECTION ACT OF 1981"

Mr. Chairman, Members of the Subcommittee, I am pleased to be appearing before the Subcommittee on Security and Terrorism, which is considering S. 391, the "Intelligence Identities Protection Act." Early last month, I appeared before the House Intelligence Subcommittee on Legislation to testify on the House version of the Bill. With both chambers considering this legislation I am hopeful that we will soon see enactment of a measure which will finally put an end to the pernicious and damaging unauthorized disclosures of intelligence identities.

The Intelligence Community's support for legislation to provide criminal penalties for the unauthorized disclosure of information identifying certain individuals engaged or assisting in the foreign intelligence activities of the United States is well known. I want to emphasize that this Administration believes that passage of the "Intelligence Identities Protection Act" is essential to the maintenance of a strong and effective intelligence apparatus. Enactment of this legislation is an important component of the Administration's effort to implement President Reagan's determination to enhance the nation's intelligence capabilities.

Mr. Chairman, there exists a coterie of Americans who have openly proclaimed themselves to be devoted to the destruction of the nation's foreign intelligence agencies. This group has engaged in actions avowedly aimed at undermining the nation's intelligence capabilities through the identification and exposure of undercover intelligence officers. The perpetrators

of these disclosures understand correctly that secrecy is the life blood of an intelligence organization and that disclosures of the identities of individuals whose intelligence affiliation is deliberately concealed can disrupt, discredit and--they hope--ultimately destroy an agency such as the CIA. Some of the persons engaged in this activity have actually traveled to foreign countries with the aim of stirring up local antagonism to U.S. officials through thinly veiled incitements to violence. Mr. Chairman, I might say that since taking the position of Director of Central Intelligence only a few months ago I can confirm that these unauthorized disclosures have resulted in untold damage, and, if not stopped, will result in further damage to the effectiveness of our intelligence apparatus, and hence to the nation itself. I might also say that I am appalled at the degree to which concerted activity is being carried out around the world to destroy a capacity which is critical to our national security and which has been painstakingly developed over many years with the full participation of the Congress and an investment of billions of dollars.

The tragic results of unauthorized disclosures of intelligence identities are well known. Five years ago, Richard Welch was murdered in Athens, Greece. Last July, only luck intervened to prevent the death of the young daughter of a U.S. Embassy

officer in Jamaica whose home was attacked only days after one of the editors of a publication called Covert Action Information Bulletin appeared in Jamaica, and at a highly publicized news conference gave the names, addresses, telephone numbers, license plates, and descriptions of the cars of U.S. government employees whom he alleged to be CIA officers. Most recently, six Americans were expelled from Mozambique following charges of engaging in espionage. These expulsions followed visits to that country by members of the Cuban intelligence service and the editors of the Covert Action Information Bulletin.

Extensive hearings before the Senate and House Intelligence Committees and before the two Judiciary Committees during the 96th Congress documented the pernicious effects of these unauthorized disclosures. Obviously, security considerations preclude my confirming or denying specific instances of purported identification of U.S. intelligence personnel. Suffice it to say that a substantial number of these disclosures have been accurate. Unauthorized disclosures are undermining the Intelligence Community's human source collection capabilities and endangering the lives of our intelligence officers in the field. The destructive effects of these disclosures have been varied and wide ranging.

Our relations with foreign sources of intelligence have been impaired. Sources have evinced increased concern for their own safety. Some active sources and individuals

contemplating cooperation with the United States have terminated or reduced their contact with us. Sources have questioned how the U.S. Government can expect its friends to provide information in view of continuing disclosures of information that may jeopardize their careers, liberty, and very lives.

Many foreign intelligence services with which we have important liaison relationships have undertaken reviews of their relations with us. Some immediately discernible results of continuing disclosures include reduction of contact and reduced passage of information. In taking these actions, some foreign services have explicitly cited disclosures of intelligence identities.

We are increasingly being asked to explain how we can guarantee the safety of individuals who cooperate with us when we cannot protect our own officers from exposure. You can imagine the chilling effect it must have on a source to one day discover that the individual with whom he has been in contact has been openly identified as a CIA officer.

The professional effectiveness of officers so compromised is substantially and sometimes irreparably damaged. They must reduce or break contact with sensitive covert sources. Continued contact must be coupled with increased defensive measures that are inevitably more costly and time consuming.

Some officers must be removed from their assignments and returned from overseas at substantial cost. Years of irreplaceable area experience and linguistic skills are lost. Reassignment mobility of the compromised officer is impaired.

As a result, the pool of experienced CIA officers available for specific overseas assignments is being reduced. Such losses are deeply felt in view of the fact that, in comparison with the intelligence services of our adversaries, we are not a large organization. Replacement of officers thus compromised is difficult and, in some cases, impossible.

Once an officer's identity is disclosed, moreover, counterintelligence analysis by adversary services allows the officer's previous assignments to be scrutinized, producing an expanded pattern of compromise through association.

Such disclosures also sensitize hostile security services and foreign populations to CIA presence, making our job far more difficult. Finally, such disclosures can place intelligence personnel and their families in physical danger from terrorist or violence-prone organizations.

It is also essential to bear in mind that the collection of intelligence is something of an art. The success of our officers overseas depends to a very large extent on intangible psychological and human chemistry factors, on feelings of trust and confidence that human beings engender in each other and on atmosphere and milieu. Unauthorized disclosure of identities information destroys that chemistry.

Mr. Chairman, I do not think it is necessary or advisable to go into greater detail about the adverse effects that unauthorized disclosures of intelligence identities are having on the work of our nation's intelligence agencies. Simply put, the credibility of our country and its relationships with foreign intelligence services and individual human sources, the lives of patriotic Americans serving their country, and the effectiveness of our intelligence apparatus are all being placed in jeopardy. The underlying basic issue is the fact that our ability to continue to recruit and retain human sources of intelligence whose information could be crucial to the nation's survival in an increasingly dangerous world, and our equally important relations with the intelligence services of other nations are in continuing jeopardy.

It is important to understand what legislation in this area seeks to accomplish: It seeks to protect the secrecy of the participation or cooperation of certain persons in the foreign intelligence activities of the U.S. Government. These are activities which have been authorized by the Congress; activities which we, as a nation, have determined are essential. No existing statute clearly and specifically makes the unauthorized disclosure of intelligence identities a criminal offense. As matters now stand the impunity with which unauthorized disclosures of intelligence identities can be made implies a governmental position of neutrality in the matter. It suggests that U.S. intelligence officers are "fair game" for those

members of their own society who take issue with the existence of CIA or find other perverse motives for making these unauthorized disclosures.

Mr. Chairman, I believe it is important to emphasize that the legislation which you are considering today is not an assault upon the First Amendment. The "Intelligence Identities Protection Act" would not inhibit public discussion and debate about U.S. foreign policy or intelligence activities, and it would not operate to prevent the exposure of allegedly illegal activities or abuses of authority. The legislation is carefully crafted and narrowly drawn to deal with conduct which serves no useful informing function whatsoever; does not alert us to alleged abuses; does not bring clarity to issues of national policy; does not enlighten public debate; and does not contribute to an educated and informed electorate.

The Bill creates three categories of the offense of disclosure of intelligence identities:

a. Disclosure of information identifying a "covert agent" by persons who have or have had authorized access to classified information that identifies such a covert agent. This category covers primarily disclosure by intelligence agency employees and others who get access to classified information that directly identifies "covert agents";



b. Disclosure of information identifying a "covert agent" by persons who have learned the identity as a result of authorized access to classified information. This category covers disclosures by any person who learns the identity of a covert agent as a result of government service or other authorized access to classified information that may not directly identify or name a specific "covert agent;" and

c. Disclosure of information identifying a "covert agent" by anyone, under certain specified conditions outlined below.

There is virtually no serious disagreement over the provisions of the legislation which provide criminal penalties for the unauthorized disclosure of intelligence identities by individuals who have had authorized access to classified information. Controversy has centered around subsection 601(c) of S. 391.

Disclosures of intelligence identities by persons who have not had authorized access to classified information would be punishable only under specified conditions, which have been carefully crafted and narrowly drawn so as to encompass only persons engaged in an effort or pattern of activities designed to identify and expose intelligence personnel. The proposed legislation also contains defenses and exceptions which reinforce this narrow construction. It is instructive, in this regard, to look at the elements of proof that would be required in a prosecution under

subsection 601(c) of S. 391, keeping in mind that the government would have to prove each of these elements beyond a reasonable doubt. The government would have to show:

- That there was an intentional disclosure of information which did in fact identify a "covert agent;"

- That the disclosure was made to an individual not authorized to receive classified information;

- That the person who made the disclosure knew that the information disclosed did in fact identify a covert agent;

- That the person who made the disclosure knew that the United States was taking affirmative measures to conceal the covert agent's classified intelligence affiliation;

- That the individual making the disclosure did so in the course of a pattern of activities intended to identify and expose covert agents; and,

- That the disclosure was made with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States.

Because of these strict conditions, which narrowly define the prohibited conduct, I believe it is clear that subsection 601(c) is directed at conduct which the Congress has the authority and power to proscribe consistent with the First Amendment, and that this Bill does so in a constitutional fashion.

Mr. Chairman, I understand that the Department of

Justice believes that the Senate version of the Bill better captures the concerted nature of the activity which is intended to be proscribed than does the House Bill, and that there are prosecutorial and evidentiary advantages to the Senate language. I believe that the Department's witness will speak to this matter.

Mr. Chairman, S. 391 will deal with a clear and immediate danger which currently--each and every day--endangers our intelligence activities, our staff officers, and the lives of those who are cooperating with our nation abroad. I want to express my gratitude and appreciation to the Subcommittee for so promptly bringing this legislation forward and reiterate the hope that it will be enacted into law as quickly as possible so that this intolerable situation is remedied.

I will be happy to answer any questions you may have.